



October 6, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

To Whom It May Concern:

We are writing on behalf of the California Sportfishing Protection Alliance ("CSPA") and the Environmental Defense Center ("EDC") in regard to violations of the Clean Water Act ("the Act") occurring at A-1 Metals & Auto Salvage's ("A-1 Metals") facility located at 5795 Stockdale Road, in Paso Robles, California, 93446 ("the Facility"). The WDID number for the Facility is 3 40I010951. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the

environment, wildlife and natural resources of California waters, including the Salinas River, and the Monterey Bay. EDC is a non-profit public benefit corporation dedicated to the protection and enhancement of the environment through education, advocacy, and legal action. EDC works primarily within San Luis Obispo, Santa Barbara, and Ventura Counties. This letter is being sent to you as the responsible owners, officers, or operators of the Facility. Unless otherwise noted, Michael Thompson, Sheryl Thompson, A-1 Metals & Auto Salvage, and A-1 Metals & Auto Salvage, Inc. shall hereinafter be collectively referred to as "A-1 Metals."

This letter addresses A-1 Metals' unlawful discharges of pollutants from the Facility to the Salinas River, which ultimately flows into Monterey Bay. A-1 Metals is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Michael Thompson, Sheryl Thompson, A-1 Metals & Auto Salvage, and A-1 Metals & Auto Salvage, Inc. are hereby placed on formal notice by CSPA and EDC that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA and EDC intend to file suit in federal court against Michael Thompson, Sheryl Thompson, A-1 Metals & Auto Salvage, and A-1 Metals & Auto Salvage, Inc. under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

A. The Clean Water Act.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The permit requirement

extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States” and includes, for example, traditionally navigable waters and tributaries to such waters. U.S.C. § 1362(7); 33 C.F.R. § 328.333 (a)(1)-(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

CSPA and EDC are informed and believe, and thereupon allege, that A-1 Metals has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the General Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since at least March 7, 1994. Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, A-1 Metals is subject to penalties for violations of the Act since October 6, 2009.

B. A-1 Metals Facility, Water Quality Standards, and EPA Benchmarks

The Facility is located at 5795 Stockdale Road in the city of Paso Robles and discharges to the Salinas River. The Facility falls under Standard Industrial Classification (“SIC”) Codes 5015 (“Motor Vehicle Parts, Used”) and 5093 (“Processing, Reclaiming, and Wholesale Distribution of Scrap and Waste Materials”). Accordingly A-1 Metals must analyze storm water samples for total suspended solids (“TSS”), pH, Specific Conductance (“SC”), and total organic carbon (“TOC”) or oil and grease (“O&G”), *see* Storm Water Permit, Section B(5)(c)(i), in addition to iron, lead, aluminum, copper, zinc and chemical oxygen demand (“COD”). *See* Storm Water Permit, Section B(5)(c)(iii); *id.* at Table D, Sections M and N.

A-1 Metals submitted a Notice of Intent (“NOI”) to discharge under the Storm Water Permit in 2006 and subsequently submitted an additional NOI in 2011. CSPA’s and EDC’s investigations into the industrial activities at A-1 Metals’ approximately five-acre Facility indicate that the Facility is used to receive, store, handle, dismantle and recycle decommissioned vehicles, equipment and automotive parts. A-1 Metals collects and discharges storm water from the Facility through at least two (2) discharge points

into the Salinas River, which ultimately flows into Monterey Bay. The Salinas River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for the Salinas River and Monterey Bay in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives." *Id.* at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu - 0.01 mg/L; Pb - 0.01 mg/L; Hg - 0.0001 mg/L; Ni - 0.002 mg/L; and, Zn - 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels ("MCLs") for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: aluminum - 1.0 mg/L; arsenic - 0.05 mg/L; lead - 0.05 mg/L; and mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for mercury - 0.002 mg/L; lead - 0.015 mg/L; chromium - 0.1 mg/L; and, copper - 1.3 mg/L.

The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for aluminum - 0.05 mg/L to 0.2 mg/L, and for zinc - 5.0 mg/L. See <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: aluminum - 1 mg/L (primary) and 0.2 mg/L (secondary); chromium - 0.5 mg/L (primary); copper - 1.0 mg/L (secondary); iron - 0.3 mg/L; and zinc - 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule ("CTR"), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic - 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) - 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper - 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); and lead - 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration), subject to water hardness.

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.¹ Discharges of pollutants into a surface water body may be deemed a "contribution" to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was "subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by A-1 Metals: Total Suspended Solids – 100 mg/L; Chemical Oxygen Demand – 120 mg/L; Iron – 1.0 mg/L; Aluminum – 0.75 mg/L; Copper, Lead and Zinc – water-hardness dependent levels. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm and total organic carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA and EDC believes are being discharged from the Facility, including but not limited to: pH – 6.0 – 9.0 s.u. oil & grease – 15.0 mg/L.

II. A-1 Metals' Violations of the General Permit.

Based on its review of available public documents, CSPA and EDC are informed and believe that A-1 Metals is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

A. A-1 Metals Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).

The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, Oil & Grease ("O&G"), pH, biochemical oxygen demand ("BOD"),

¹ See http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

A-1 Metals has discharged and continues to discharge storm water with unacceptable levels of Total Suspended Solids, Specific Conductance, Chemical Oxygen Demand, Iron, Aluminum, Copper, and Lead in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. A-1 Metals' Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

- 1. Discharges of Storm Water Containing Copper (Cu) at Concentrations in Excess of EPA Benchmark and CTR Criteria.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value ²	CTR Criteria ³
1/23/12	North Discharge	Cu	0.39 mg/L	0.0123 mg/L	0.011 mg/L
1/23/12	South Discharge	Cu	0.1 mg/L	0.0123 mg/L	0.011 mg/L
4/12/12	North Discharge	Cu	0.23 mg/L	0.0123 mg/L	0.011 mg/L
4/12/12	South Discharge	Cu	0.098 mg/L	0.0123 mg/L	0.011 mg/L
2/6/13	North Discharge	Cu	0.44 mg/L	0.0123 mg/L	0.011 mg/L

2. Discharges of Storm Water Containing Lead (Pb) at Concentrations in Excess of EPA Benchmark and CTR Criteria.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value	CTR Criteria
12/07/09	North Discharge	Pb	0.088 mg/L	0.069 mg/L	0.061 mg/L
1/18/10	North Discharge	Pb	0.38 mg/L	0.069 mg/L	0.061 mg/L
1/18/10	South Discharge	Pb	0.2 mg/L	0.069 mg/L	0.061 mg/L

² See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP), as modified effective May 27, 2009. Copper and lead are both hardness-dependent benchmarks, and a hardness of 75-100mg/L was used for this Notice Letter for the Copper values expressed in this table and the table concerning Lead below. Even with a hardness of 250+, A1 Metals would still exceed EPA benchmarks by magnitudes.

³ Criteria for priority toxic pollutants under the CTR are set forth at 40 C.F.R. § 131.38. The regulation lists the criteria in the form of dissolved metals, whereas the General Permit requires reporting in the form of total metals. General Permit at Section B(10)(b). The CTR criteria listed in this Notice Letter are therefore expressed in total metals to provide an accurate basis of comparison for both the Copper values expressed in this table and the table concerning Lead below. See 40 C.F.R. § 131.38(b)(2)(i) (conversion formula). This Notice Letter assumes a hardness of 75-100mg/L, however, even with a greater hardness, A1 Metals would still exceed the relevant CTR criteria.

4/12/12	North Discharge	Pb	0.32 mg/L	0.069 mg/L	0.061 mg/L
4/12/12	South Discharge	Pb	0.12 mg/L	0.069 mg/L	0.061 mg/L

3. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
1/18/10	North Discharge	TSS	450 mg/L	100 mg/l
1/18/10	South Discharge	TSS	480 mg/L	100 mg/l
2/18/11	North Discharge	TSS	1167 mg/L	100 mg/L
2/18/11	South Discharge	TSS	253 mg/L	100 mg/L
1/23/12	North Discharge	TSS	326 mg/L	100 mg/L
1/23/12	South Discharge	TSS	354 mg/L	100 mg/L
4/12/12	North Discharge	TSS	380 mg/L	100 mg/L
4/12/12	South Discharge	TSS	285 mg/L	100 mg/L

4. Discharges of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/18/11	South	SC	245 mg/L	200 mg/l

4/12/12	South	SC	301 mg/L	200 mg/L
2/6/13	South	SC	201 mg/L	200 mg/L

5. Discharge of Storm Water Containing Chemical Oxygen Demand (COD) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
1/23/12	North Discharge	COD	203 mg/L	120 mg/l
1/23/12	South Discharge	COD	121 mg/L	120 mg/L
4/12/12	North Discharge	COD	232 mg/L	120 mg/L
4/12/12	South Discharge	COD	159 mg/L	120 mg/L

6. Discharge of Storm Water Containing Iron (Fe) at Concentration in Excess of EPA Proposed Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
12/7/09	North Discharge	Fe	2.9 mg/L	1.0 mg/L
12/7/09	South Discharge	Fe	3.9 mg/L	1.0 mg/L
1/18/010	North Discharge	Fe	1.5 mg/L	1.0 mg/L
1/23/12	North Discharge	Fe	19.4 mg/L	1.0 mg/L
1/23/12	South Discharge	Fe	15.2 mg/L	1.0 mg/L
4/12/12	North Discharge	Fe	22.0 mg/L	1.0 mg/L
4/12/12	South Discharge	Fe	12.0 mg/L	1.0 mg/L

2/6/13	North Discharge	Fe	27.1 mg/L	1.0 mg/L
2/6/13	South Discharge	Fe	4.5 mg/L	1.0 mg/L

7. Discharge of Storm Water Containing Aluminum (Al) at Concentration in Excess of EPA Proposed Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	EPA Benchmark Value
12/7/09	North Discharge	Al	2.9 mg/L	0.75 mg/L
12/7/09	South Discharge	Al	3.5 mg/L	0.75 mg/L
1/18/10	North Discharge	Al	1.4 mg/L	0.75 mg/L
1/18/10	South Discharge	Al	0.88 mg/L	0.75 mg/L
1/23/12	North Discharge	Al	15.5 mg/L	0.75 mg/L
1/23/12	South Discharge	Al	15.2 mg/L	0.75 mg/L
4/12/12	North Discharge	Al	12.0 mg/L	0.75 mg/L
4/12/12	South Discharge	Al	8.9 mg/L	0.75 mg/L
2/6/13	North Discharge	Al	19.5 mg/L	0.75 mg/L
2/6/13	South Discharge	Al	5.23 mg/L	0.75 mg/L

The above samples demonstrate violations of Effluent Limitation B(3). CSPA's and EDC's investigations, including their review of A-1 Metals' analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark levels for specific conductivity, indicates that A-1 Metals has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Specific Conductance, Chemical Oxygen Demand, Iron, Aluminum, Copper, and Lead in violation of Effluent Limitation

B(3) of the General Permit. A-1 Metals was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, A-1 Metals is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above samples likewise demonstrate violations of Receiving Water Limitation C(2) of the General Permit, with respect to copper and lead, because such discharges cause or contribute to an exceedance of applicable water quality standards, in this case, the relevant CTR limits. The above samples also demonstrate violations of Receiving Water Limitation C(1) of the General Permit, because such discharges adversely impact human health or the environment, and Discharge Prohibition A (2) because the discharges cause or threaten to cause pollution, contamination or nuisance.

CSPA and EDC are informed and believe that A-1 Metals has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least October 6, 2009. CSPA and EDC allege that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since October 6, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA and EDC allege that A-1 Metals has discharged storm water containing impermissible levels of Total Suspended Solids, Specific Conductance, Chemical Oxygen Demand, Iron, Aluminum, Copper, and Lead in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, A-1 Metals is subject to penalties for violations of the General Permit and the Act since October 6, 2009.

B. A-1 Metals Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All

storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B(10) of the General Permit provides that “Facility operators shall explain how the Facility’s monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2.”

Based on their investigations, CSPA and EDC are informed and believe that A-1 Metals has failed to develop and implement an adequate Monitoring & Reporting Plan. As an initial matter, based on their review of publicly available documents, CSPA and EDC are informed and believe that A-1 Metals has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during all five of the past five Wet Seasons. Second, based on their review of publicly available documents, CSPA and EDC are informed and believe that A-1 Metals has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during the past two Wet Seasons. A1 Metals has also failed to employ adequate testing methods in violation of the General Permit.

Moreover, A-1 Metals has failed to analyze storm water samples for all required constituents. As a facility enrolled under SIC Code 5093 A-1 Metals must also analyze samples for Zinc. *See* Storm Water Permit, Section B(5)(c)(iii); *id.* at Table D, Section N. It has failed to do so on every occasion that it sampled since October 6, 2009. Finally, based on their review of publicly available documents, CSPA and EDC are informed and believe that for two of the past five Wet Seasons, A-1 Metals has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility, including aluminum 0.75 mg/L ; oil & grease – 15 mg/L; mercury – 0.0024 mg/L; nickel – 1.417 mg/L; magnesium – 0.0636 mg/L; cadmium – 0.0159 mg/L.

Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the Clean Water Act, A-1 Metals is subject to penalties for violations of the General Permit and the Act since October 6, 2009. These violations are set forth in greater detail below.

- 1. A-1 Metals Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events In All Five of The Last Five Wet Seasons, and Failed to Sample from All Required Discharge Points.**

Based on its review of publicly available documents, CSPA and EDC are informed and believe that A-1 Metals has failed to collect storm water samples from all

discharge points during at least two qualifying rain events at the Facility during each of the past five Wet Seasons, as required by the General Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

In four of the past five Wet Seasons, A-1 Metals reported that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, A-1 Metals reported in its 2009-2010 Annual Report that it sampled the first qualifying storm event of the Wet Season on December 7, 2009. Based upon its review of publicly available rainfall data, CSPA and EDC are informed and believe that the first qualifying storm event of the 2009-2010 Wet Season occurred as early as Wednesday, October 14, 2009, when 0.32" of rain fell on the Facility.

In addition, A-1 Metals reported in its 2010-2011 Annual report that it only sampled from one qualifying storm event, even though there were numerous opportunities to sample such an event. Further, in that same Annual Report, the storm event that A-1 Metals did sample was not a qualifying storm event. Based on its review of publicly available rainfall data, CSPA and EDC are informed and believe that the storm that occurred at the Facility on February 18, 2011 was not a qualifying storm event because it rained 0.53" at the Facility on the day before. Thus, the February 17, 2011 storm event rendered any storm occurring for three days afterwards non-qualifying. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

Further, based on its investigation, CSPA and EDC are informed and believe that storm water discharges from the Facility at points other than the two sampling points currently designated by A-1 Metals. These failures to adequately monitor storm water discharges constitute separate and ongoing violations of the General Permit and the Act.

2. A-1 Metals Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in A-1 Metals' Annual Reports for five of the last five Wet Seasons, CSPA and EDC are informed and believe that A-1 Metals has failed to comply with this requirement of the General Permit.

Specifically, A-1 Metals failed to conduct monthly visual observations of discharges from qualifying storm events for all months during five of the past five Wet Seasons as required by the General Permit. Instead, A-1 Metals either completely failed to document visual observations at all, or documented its visual observations of storm

water that discharged during non-qualifying storm events during five of the past five Wet Seasons. However, based on publicly available rainfall data, CSPA and EDC are informed and believe that there were many qualifying storm events during each of these Wet Seasons that A-1 Metals could have observed.

For example, A-1 Metals reported in its 2013-2014 Annual Report that it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, CSPA and EDC are informed and believe that this could not be possible because there were numerous significant rainfall events during those months. *See Attachment A.* A-1 Metals' failure to conduct this required monthly Wet Season visual monitoring extends back to at least October 6, 2009, and has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

3. A-1 Metals' Failure to Employ Adequate Testing Methods in Violation of the General Permit Since October 6, 2009.

Additionally, A-1 Metals is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. The Regional Board has determined the appropriate laboratory test methods to employ when analyzing storm water samples for the presence and concentration of various pollutants, as well as the appropriate detection limits for those testing methods.

However, in every single annual report filed by A-1 Metals, in four of the past five years, the test methods and detection limits employed by the laboratory utilized by A-1 Metals to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with the Regional Board requirements. For example, the testing method A-1 Metals was required to apply for lead, aluminum, and iron was EPA 200.8 with a detection limit of 0.0005. However, in the annual report filed by A-1 Metals in 2009-2010 the laboratory utilized test method EPA 6020 with detection limits of 0.001, 1, and 0.0025 respectively. Further, in the annual report filed by A-1 Metals in 2012-2013, the detection limits for aluminum and iron were above the required detection limits by at least an order of magnitude. These are just a few of many examples of A-1 Metals' failure to adequately test the presence and concentration of pollutants at their storm water discharge points

A-1 Metals is in violation of the General Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit, Section B.2.a. ("Monitoring Program Objectives").

CSPA and EDC are informed and believe that publicly available documents demonstrate A-1 Metals' consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the General Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, A-1 Metals is subject to penalties for these violations of the General Permit and the Act since October 6, 2009.

4. A-1 Failure to Analyze Storm Water Samples for All Required Constituents.

Moreover, A-1 Metals has failed to analyze storm water samples for all required constituents. Specifically, it has failed to ever analyze samples for Zinc, as required for facilities enrolled under SIC Codes 5093. *See* Storm Water Permit, Section B(5)(c)(iii); *Id.* at Table D, Section N. It has failed to do so on every occasion that it sampled since October 6, 2009.

In addition, CSPA and EDC are informed and believe that for two of the past five Wet Seasons, A-1 Metals has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility, including aluminum 0.75 mg/L ; oil & grease – 15 mg/L; mercury – 0.0024 mg/L; nickel – 1.417 mg/L; magnesium – 0.0636 mg/L; and cadmium – 0.0159 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the General Permit and Clean Water Act. Accordingly, A-1 Metals is subject to penalties for these violations of the General Permit and the Act since October 6, 2009.

C. A-1 Metals Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's and EDC's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that A-1 Metals has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Specific Conductance, Chemical Oxygen Demand, Iron, Aluminum, Copper, and Lead and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, A-1 Metals must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA and EDC believe that at a minimum A-1 Metals must improve its housekeeping practices, store materials that act as pollutant

sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. A-1 Metals has failed to adequately implement such measures.

A-1 Metals was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, A-1 Metals has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. A-1 Metals is subject to penalties for violations of the General Permit and the Act occurring since October 6, 2009.

D. A-1 Metals Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure

effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's and EDC's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that A-1 Metals has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. A-1 Metals has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, A-1 Metals has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. A-1 Metals is subject to penalties for violations of the General Permit and the Act occurring since October 6, 2009.

E. A-1 Metals Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, A-1 Metals is discharging elevated levels of Total Suspended Solids, Specific Conductance, Chemical Oxygen Demand, Iron, Aluminum, Copper, and Lead and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, A-1 Metals was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's and EDC's review of available documents, A-1 Metals was aware of high levels of these pollutants long before October 6, 2009. Likewise, A-1 Metals has generally failed to file reports describing its non-compliance with the General Permit in violation of Section C(11)(d). A-1 Metals has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since October 6, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. A-1 Metals is subject to penalties for violations of the General Permit and the Act occurring since October 6, 2009.

F. A-1 Metals Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's and EDC's investigations indicate that A-1 Metals has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, A-1 Metals reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2009-2010, 2010-2011, 2011-2012, and 2012-2013) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on their review of publicly available rainfall data, CSPA and EDC believe this is incorrect.

Further, A-1 Metals failed to sample from qualifying storm events in four out of the six storm water samples collected during the last five Wet Seasons. In the 2013-2014 Annual Report, A-1 Metals did not provide any sampling data whatsoever. A-1 Metals also failed to comply with the monthly visual observations of storm water discharges requirement for five of the past five Annual Reports filed for the Facility. For example, in the 2012-2013 Annual Report, A-1 Metals did not observe discharge from any qualifying storm events in the months of December and March, even though there were numerous qualifying storm events to observe.

These are but a few examples of how A-1 Metals has failed to file completely true and accurate reports. As indicated above, A-1 Metals has failed to comply with the Permit and the Act consistently for the past four years; therefore, A-1 Metals has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time A-1 Metals submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. A-1 Metals' failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. A-1 Metals is subject to

penalties for violations of Section (C) of the General Permit and the Act occurring since October 6, 2009.

IV. Persons Responsible for the Violations.

CSPA and EDC put Michael Thompson, Sheryl Thompson, A-1 Metals & Auto Salvage, and A-1 Metals & Auto Salvage, Inc. on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA and EDC puts Michael Thompson, Sheryl Thompson, A-1 Metals & Auto Salvage, and A-1 Metals & Auto Salvage, Inc. on formal notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067; Environmental Defense Center, Owen Bailey, Executive Director; 906 Garden Street, Santa Barbara, CA 93101; Phone: (805) 963-1622.

VI. Counsel.

CSPA and EDC have retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
Megan Truxillo
John J. Prager
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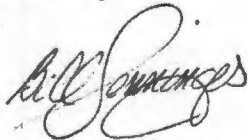
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Attorneys for EDC

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Michael Thompson, Sheryl Thompson, and A-1 Metals & Auto Salvage to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA and EDC will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA and EDC believe this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Michael Thompson, Sheryl Thompson, A-1 Metals & Auto Salvage, and A-1 Metals & Auto Salvage, Inc and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance



Owen Bailey, Executive Director
Environmental Defense Center

Notice of Violation and Intent To File Suit
October 6, 2014

SERVICE LIST

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U.S. Environmental Protection Agency
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Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
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Kenneth A. Harris, Jr., Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
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ATTACHMENT A
Notice of Intent to File Suit, A-1 Metals & Auto Salvage
Significant Rain Events,* October 6, 2009 – October 6, 2014

Oct 10 2009	Nov 20 2010	Mar 25 2012
Oct 13 2009	Nov 21 2010	Mar 31 2012
Oct 14 2009	Dec 5 2010	Apr 10 2012
Oct 19 2009	Dec 17 2010	Apr 12 2012
Dec 3 2009	Dec 18 2010	Apr 13 2012
Dec 7 2009	Dec 19 2010	Apr 25 2012
Dec 10 2009	Dec 20 2010	Nov 17 2012
Dec 11 2009	Dec 21 2010	Nov 28 2012
Dec 12 2009	Dec 22 2010	Nov 30 2012
Dec 27 2009	Dec 28 2010	Dec 2 2012
Dec 30 2009	Dec 29 2010	Dec 12 2012
Jan 13 2010	Jan 1 2011	Dec 22 2012
Jan 17 2010	Jan 2 2011	Dec 23 2012
Jan 18 2010	Feb 14 2011	Dec 25 2012
Jan 19 2010	Feb 16 2011	Dec 29 2012
Jan 20 2010	Feb 17 2011	Jan 6 2013
Jan 21 2010	Feb 18 2011	Jan 24 2013
Jan 22 2010	Feb 19 2011	Feb 8 2013
Jan 26 2010	Feb 25 2011	Feb 19 2013
Feb 4 2010	Mar 2 2011	Mar 6 2013
Feb 5 2010	Mar 18 2011	Mar 7 2013
Feb 6 2010	Mar 19 2011	May 6 2013
Feb 9 2010	Mar 20 2011	Nov 20 2013
Feb 19 2010	Mar 21 2011	Feb 2 2014
Feb 21 2010	Mar 23 2011	Feb 6 2014
Feb 24 2010	Mar 24 2011	Feb 26 2014
Feb 26 2010	Apr 7 2011	Feb 28 2014
Feb 27 2010	May 15 2011	Mar 1 2014
Mar 3 2010	May 16 2011	Mar 29 2014
Mar 13 2010	May 17 2011	Mar 31 2014
Apr 4 2010	May 18 2011	Apr 1 2014
Apr 5 2010	June 4 2011	Apr 2 2014
Apr 11 2010	June 5 2011	Apr 4 2014
Apr 12 2010	June 6 2011	
Apr 20 2010	Oct 5 2011	
Apr 21 2010	Oct 6 2011	
Apr 27 2010	Nov 4 2011	
May 18 2010	Nov 6 2011	
Oct 5 2010	Nov 11 2011	
Oct 6 2010	Nov 12 2011	
Oct 29 2010	Jan 21 2012	
Nov 7 2010	Mar 17 2012	
Nov 8 2010	Mar 24 2012	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.